



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 15, 1998

Ms. Julie B. Ross
Haynes & Boone, L.L.P.
201 Main Street, Suite 2200
Fort Worth, Texas 76102-3126

OR98-3118

Dear Ms. Ross:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 120570.

The City of Coppell (the "city") received a request for the personnel file and termination letter of Officer Daniel Harm. You contend that the requested information is excepted from disclosure under sections 552.101, 552.103 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The city must meet both prongs of this test for information to be excepted under section 552.103(a).


You have submitted a petition styled, *Scott v. City of Coppell*, No. NV98-06596, (A-14th Dist. Ct., Dallas County, Tex., filed Aug. 24, 1998). Furthermore, you explain that the plaintiff "alleged that his termination was in retaliation for a complaint he filed against Officer Harm." We have considered your arguments and the submitted materials and conclude that you have shown that the information is related to the pending litigation.

Accordingly, you may withhold the submitted information under section 552.103.¹

Generally, however, information that has either been obtained from or provided to the opposing party in the anticipated litigation through discovery or otherwise is not excepted from disclosure under section 552.103(a), and it must be disclosed. Open Records Decision Nos. 349 (1982), 320 (1982). Additionally, we note that the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "June B. Harden". The signature is fluid and cursive, with the first name "June" and last name "Harden" clearly distinguishable.

June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref.: ID# 120570

Enclosures: Submitted documents

cc: Mr. Michael Ryan
Coppell Gazette
1165 S. Stemmons Freeway, Suite 100
Lewisville, Texas 75067
(w/o enclosures)

¹As we resolve this matter under section 552.103, we need not address the other exceptions you have raised. We caution, however, that some of the submitted information may be confidential by law. Therefore, if the city receives a request in the future, at a time when litigation is no longer reasonably anticipated or pending, the city should seek a ruling from this office on the other exceptions raised before releasing any of the requested information. *See* Gov't Code § 552.352 (distribution of confidential information may constitute criminal offense).